



Texas Department of Insurance

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Opinion Committee

MBJ
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RO-663

The Honorable Dan Morales
Attorney General of the State of Texas
Attn: Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

Re: The extent of the jurisdiction of the Texas Department of Insurance under TEX.
INS. CODE ANN. art. 3.50-6A

Dear General Morales:

The 73rd Legislature added a new Article 3.50-6A to Subchapter E, Chapter 3 of the Texas Insurance Code. That article provides that "the board has exclusive jurisdiction in this state to regulate viatical settlements, regardless of form, other than transactions governed by The Securities Act (Article 5681-1 et seq., Vernon's Texas Civil Statutes)". A viatical settlement is defined as "a contract, entered into by an insured with a terminal illness who owns a life insurance policy insuring the life of the insured, under which the insured assigns or transfers the insurance policy to another person or entity for valuable consideration."

The language of the statute gives the Texas Department of Insurance (TDI) jurisdiction over regulation of viatical settlements, except for transactions governed by the Securities Act. Staff from TDI and the Securities Board are coordinating procedures for referral of complaints between the agencies, and mechanisms for joint action where appropriate. With respect to its jurisdiction, TDI believes that the Legislature intended for the Department to have jurisdiction over individuals entering into viatical settlements, whether or not such entities are licensed by this Department due to other insurance-related activities. The statute does not explicitly grant jurisdiction to TDI over entities not already licensed to perform insurance-related activities (referred to as non-insurance entities). This lack of explicit authority gives rise to several questions:

(1) Can TDI license non-insurance entities who offer viatical settlement agreements?


The Honorable Dan Morales
August 25, 1993
Page 2

(2) If so, can TDI charge a fee for such licenses?

(3) If TDI cannot license non-insurance entities offering viatical settlement agreements, may the department, nevertheless, enforce its regulations of such settlements through the sanctions set forth in Texas Insurance Code, Article 1.10, §7?

(4) If the answer to question (3) is in the negative, could TDI enforce its viatical settlement regulations against non-insurance entities through the courts, utilizing the services of the Office of the Attorney General?

Sincerely,



Georgia D. Flint
Commissioner of Insurance

GDF/MHA/lr